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ADMITTED IN D.C. AND VA

January 24, 2000

OUR FILE NO.
1760-101-63

Magalie R. Salas, Secretary
Federal Communications Commission
445 Twelfth Street, SW, Room TW-A325
Washington, DC 20554

RECEIVED
JAN 24 2000
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

RE: Amendment of Section 73.202(b)
Table of FM Allotments
Elberton and Lavonia, GA
Docket No. 99-343
RM-9750

Dear Ms. Salas:

Transmitted herewith are an original and four copies of the
COMMENTS OF RADIO ELBERTON, INC., in the above-referenced
proceeding.

If you have any questions concerning this submission, please contact the
undersigned directly.

Sincerely,


John M. Pelkey

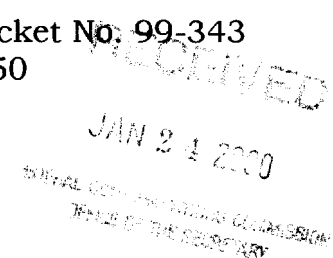
Enclosures (5)
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Before The
Federal Communications Commission

Washington, D.C. 20554

In The Matter of)	
)	
Amendment of Section 73.202(b))	MM Docket No. 99-343
Table of Allotments)	RM-9750
FM Broadcast Stations)	
Elberton and Lavonia, GA)	
In re Application of		
Waves of Mercy Productions, Inc.		BPED-19990630MB
Pendergrass, Georgia		
For Construction Permit for New		
Noncommercial Educational FM		
Station		
To: Chief, Allocations Branch		



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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

Comments of Radio Elberton, Inc.

Radio Elberton, Inc., ("Radio Elberton"), licensee of WWRK-FM, Elberton, Georgia, hereby submits its Comments with respect to the above-captioned rulemaking. The rulemaking was initiated as the result of a Petition for Rulemaking filed by Radio Elberton in which it proposed the reallocation of Channel 221A from Elberton, Georgia, to Lavonia, Georgia, as Lavonia's first local aural service. Waves of Mercy Productions, Inc. ("Waves of Mercy") has filed an application with the FCC requesting authority to construct a new FM station on Channel 220A at Pendergrass, Georgia. Because the Waves of Mercy application conflicts with the proposed allotment of Channel 221A to Lavonia, the

Commission requested in the Notice of Proposed Rule Making (“*NPRM*”) issued in this proceeding that the parties address the question of whether the Waves of Mercy application or the Radio Elberton proposal better satisfies the Commission’s allotment priorities. *NPRM* at para. 4. As will be shown below, the Radio Elberton proposal is far superior to the Waves of Mercy application in meeting the Commission’s allotment priorities and, as a result, should be granted.

I. Background

By Petition for Rulemaking filed on August 26, 1999, Radio Elberton requested that the Commission institute a rulemaking proceeding to amend Section 73.202(b) of the Commission’s Rules, the Table of FM Allotments, so as to (1) reallocate Channel 221A from Elberton to Lavonia, and (2) modify the license of WWRK-FM, which currently operates on Channel 221A in Elberton, accordingly. The *NPRM* soliciting comments on the Radio Elberton proposal was released December 3, 1999. That *NPRM* established January 24, 2000, as the date for the submission of Comments.

II. Adoption of the Radio Elberton Proposal is in the Public Interest

Radio Elberton demonstrated in its Petition for Rulemaking that its proposed reallocation would result in significant public interest

benefits. Whereas Elberton is already receiving service from WWRK(AM), which operates on 1400 kilohertz, and WEHR(FM), a Class A station operating on Channel 286, Lavonia has no local aural service. In addition to providing Lavonia with its first local aural service, the Radio Elberton proposal also would permit a significant increase in the number of persons who are able to receive WWRK-FM. Currently, the station serves 23,843 persons and has a 60 dBu contour that encompasses 1741.8 square kilometers. The proposed new Lavonia station, operating from its reference coordinates,¹ would serve 70,236 persons within its 60 dBu contour, a 194% increase, and more than 2,500 square kilometers would be encompassed within that contour, which represents a coverage increase of 44%.² Moreover, in permitting the reallocation of Channel 221A from Elberton to Lavonia, the Commission would not be depriving inhabitants of the current WWRK-FM coverage area of radio service. As was demonstrated in the engineering statement attached to Radio Elberton's Petition for Rulemaking,³ the proposed loss area is served by eight AM stations and several FM stations other than WWRK-FM. As a

¹ The coordinates for Channel 221A at Lavonia are 34-27-26 North Latitude and 83-14-27 West Longitude. *See NPRM* at n.2.

² The improvement in coverage is largely due to the fact that WWRK-FM currently is limited to operation with less than full Class A facilities because of spacing considerations.

³ For the convenience of the Commission staff, a copy of that engineering statement is attached hereto as Engineering Statement I.

result, the loss area is well served and the creation of the loss area does not adversely affect the public interest.

III. The Radio Elberton Proposal Better Satisfies the Commission's Allotment Priorities than the Waves of Mercy Application

Shortly before Radio Elberton filed its Petition for Rulemaking, Waves of Mercy filed its application for a new non-commercial educational FM station to serve Pendergrass, Georgia. When the standard allotment priorities set forth in *Revision of FM Assignment Policies and Procedures*, 90 FCC2nd 88 (1982), are applied to the Radio Elberton proposal and the Waves of Mercy application, it becomes apparent that the Radio Elberton proposal is clearly superior to the Waves of Mercy application.

The Commission has articulated four priorities in making allotment determinations: (1) first fulltime aural service; (2) second fulltime aural service; (3) first local aural service; and (4) other public interest matters. As the Commission itself has recognized, however, because there are virtually no populated areas of the country where satisfaction of the higher allotment priorities, such as the first reception service, has not been achieved, provision of first local service is the highest of the Commission's allotment priorities which remains in any

significant degree unsatisfied. *Amendment of the Commission's Rules Regarding Modification of FM and TV Authorizations to Specify a New Community of License*, 5 FCC Rcd 7094, 7096 (1990).

Applying this now preeminent priority to the Radio Elberton and Waves of Mercy proposals, the Radio Elberton proposal is clearly preferable. Although Waves of Mercy, like Radio Elberton, is proposing first local service, Waves of Mercy's community of license, Pendergrass, is significantly smaller than Radio Elberton's proposed community of license of Lavonia. According to the 1990 census, Pendergrass has a population of 298 people. By contrast, Lavonia supports a population of 1,840 people. This significant differential in population in and of itself warrants the adoption of the Radio Elberton proposal.⁴

Moreover, the Radio Elberton proposal is to be preferred over the Waves of Mercy application under the fourth allotment priority, *i.e.*, other public interest matters. That is because Radio Elberton's proposal is far superior to the Waves of Mercy application in the provision of additional service to the public. As is demonstrated in the attached Engineering Statement II, only 188.5 square kilometers would be encompassed within the Waves of Mercy 1 mV/m contour. The total population within that contour is 3,620 persons. By contrast, adoption of

⁴See, *e.g.*, *Powhatan and Goochland, Virginia* 12 FCC Rcd 3191 (1997) (Channel allotted to community with 1,350 persons rather than community with 610 persons).

Radio Elberton's proposal would permit WWRK-FM to produce a 1 mV/m contour encompassing an additional 758.2 square kilometers and an additional 43,393 persons, i.e., more than 10 times the number of people as the Waves of Mercy proposal.

The conclusion is thus inescapable that the Radio Elberton proposal is far superior to the Waves of Mercy application in serving the Commission's allocations priorities.

IV. Statement of Continuing Interest

As required by Paragraph 2 of the Appendix to the *NPRM*, Radio Elberton hereby restates its intention to file the requisite application for facilities providing a city grade signal over Lavonia if the Radio Elberton proposal is adopted and, if authorized, to build those facilities promptly upon grant of the application.

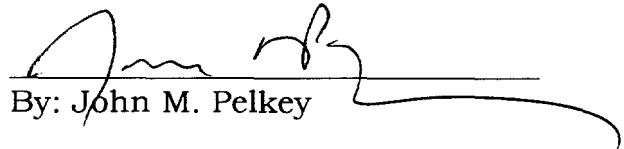
Conclusion

The Radio Elberton proposal is in the public interest, and is clearly superior to the Waves of Mercy application based upon the Commission's allotment priorities. Accordingly, Radio Elberton respectfully requests that the Commission adopt the Radio Elberton

proposal and (1) reallocate Channel 221A from Elberton, Georgia, to
Lavonia, Georgia and (2) modify the license of WWRK-FM accordingly.

Respectfully submitted,

RADIO ELBERTON, INC.


By: John M. Pelkey

HALEY, BADER & POTTS
Suite 900
4350 North Fairfax Drive
Arlington, VA 22203-1633
703/841-0606
January 24, 2000

Engineering Statement I

**Request For Rule Making
on behalf of
Radio Elberton, Inc.
to add Channel 221A to
Lavonia, Georgia
August 1999**

**EXHIBIT #3
Services To Loss Area**

A study was conducted to determine the broadcast services received in the area created by WWRK-FM changing cities of license to Lavonia, Georgia. Exhibit #3A illustrates AM broadcast stations that provide a 0.5 mV/m contour over the entire rural loss area. Those stations are:

WWRK-AM	Elberton, GA
WRFC(AM)	Athens, GA
WDUN(AM)	Gainesville, GA
WBKZ(AM)	Jefferson, GA
WESC(AM)	Greenville, SC
WRIX(AM)	Homeland Park, SC
WKLY(AM)	Hartwell, GA
WBIC(AM)	Royston, GA

Exhibit 3A (1) indicates some of the FM services to the entire loss area. The present WNGC(FM)² covers the entire loss area. Three additional stations: WPEK, WEHR and WGMG serve the entire loss area with a 60 dBu or greater signal when their contours are combined. The tabulation of FM stations serving all or part of the loss area is:

WNGC(FM)	Athens, GA
WEHR(FM)	Elberton, GA
WGMG(FM)	Crawford, GA
WPEK(FM)	Seneca, SC

² WNGC currently holds Construction Permit BPH-971229IE to relocate sites and downgrade to Class C1. If this permit is constructed, service to the REI loss area will be reduced from the present WNGC licensed facility.

Additionally that portion of the loss area that is in the City of Elberton (a city larger than 2,500 persons) is calculated utilizing 2.0 mV/m AM contours (See Exhibit #3B). The City of Elberton is depicted in yellow. The following services serve the City of Elberton with 2.0 mV/m AM or 60 dBu FM service:

WRIX(AM)	Homeland Park, SC
WJMZ(FM)	Anderson, SC
WPEK(FM)	Seneca, SC
WWRK-AM	Elberton, GA
WPUP(FM)	Royston, GA
WEHR(FM)	Elberton, GA
WNGC(FM)	Athens, GA

In each case, whether city or rural, there are five or more broadcast services covering the area. The AM primary signal level is defined in §73.182.

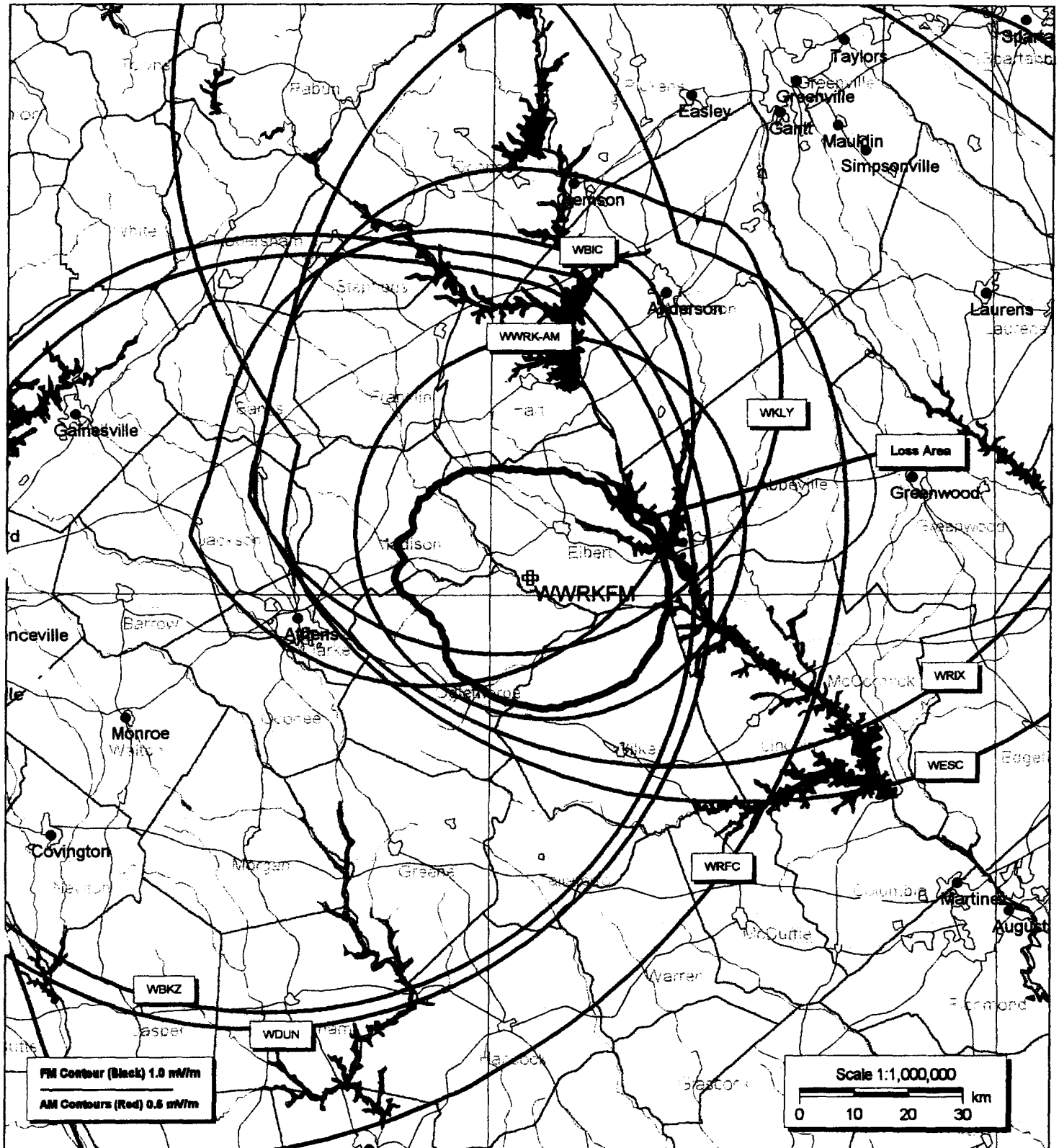


EXHIBIT #3A
AM SERVICE TO LOSS AREA
Request For Rule Making
on behalf of Radio Elberton, Inc.
to add Channel 221A to
Lavonia, Georgia

Bromo Communications, Inc.
Atlanta, Georgia
August 1999

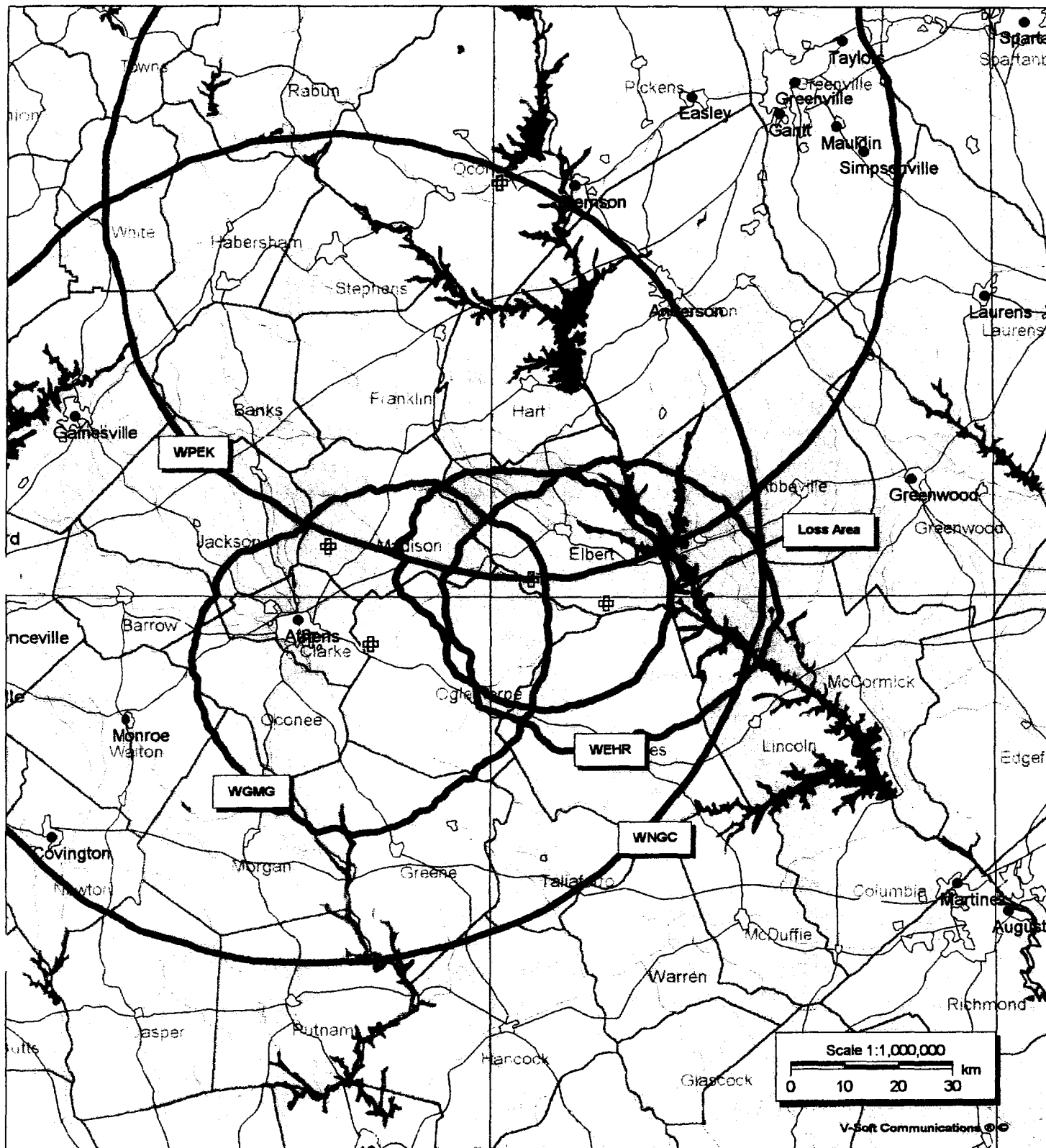


EXHIBIT #3A (1)
PARTIAL FM SERVICE TO LOSS AREA
Request For Rule Making
of behalf of Radio Elberton, Inc.
to add Channel 221A to
Lavonia, Georgia

Bromo Communications, Inc.
Atlanta, Georgia
August 1999

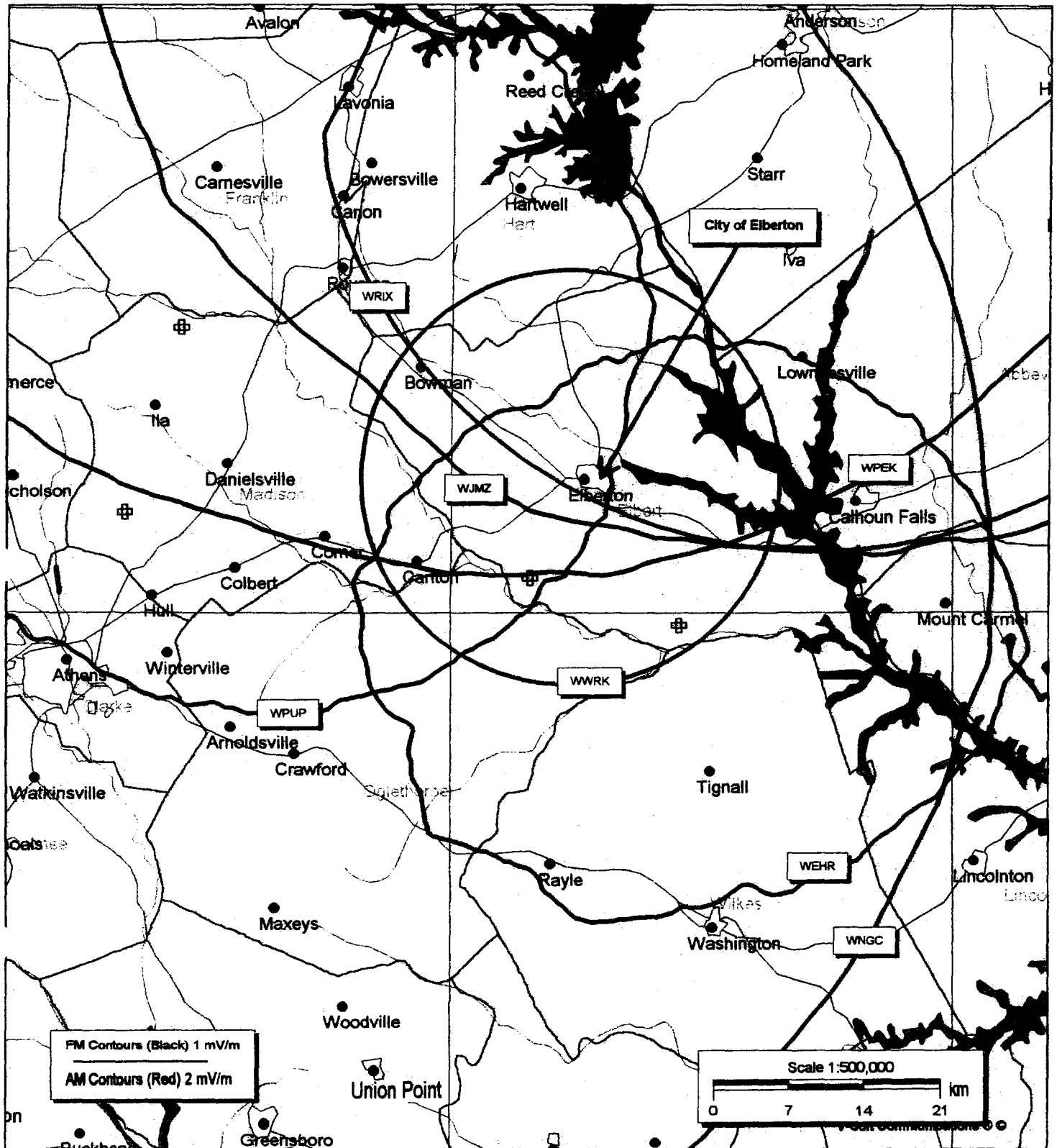


EXHIBIT #3B
AURAL SERVICE TO CITY OF ELBERTON, GA
Request For Rule Making
on behalf of Radio Elberton, Inc.
to add Channel 221A to
Lavonia, Georgia

Bromo Communications, Inc.
Atlanta, Georgia
August 1999

Engineering Statement II

**Technical Comments
on behalf of
Radio Elberton, Inc.
Lavonia, Georgia
January 2000**

These Comments are filed on behalf of Radio Elberton, Inc., proponent to re-allocate Channel 221A from Elberton, Georgia to Lavonia, Georgia. This proposal would create the first local aural service to Lavonia.

The purpose of these comments is to compare the areas and population served by not only the Radio Elberton proposal, but also an application to commence non-commercial/educational service to Pendergrass, Georgia on Channel 220A. Using identical methodology to make these areas and population calculations would indeed make an "apples to apples" comparison.

All calculations utilized the three-second terrain database. At the Radio Elberton allocation site of North Latitude 34° 27' 26" and West Longitude 83° 14' 27", the center of radiation above mean sea level to produce a height above average terrain of 100 meters is 341.7 meters. Using the commercially available program *Contour* the area served by the 60 dBu contour is 2,511.3 square kilometers. Another commercially available program *Probe* counted the persons within the 60 dBu area as 70, 236 persons.

The identical programs and settings were applied to the Pendergrass, Georgia application filed by Waves of Mercy Productions, Inc. The center of radiation

above mean sea level of 305 meters was taken from their application. The results indicate within the 60 dBu area 188.5 square kilometers and a population of 3,620 persons.

Using the same methodology for the current service provided by WWRK, Elberton, GA, the current stations serves 23,843 persons and 1,741.8 square kilometers within its licensed 60 dBu contour. The gain of square kilometers served is 44% comparing the proposed service to licensed service of Radio Elberton.

Subtracting the currently served 23,843 persons from the proposed Radio Elberton service of 70,236 produces a gain of 43,393 persons. This gain far outweighs the 3,620 *total* persons who would receive service from the Waves of Mercy Productions application. The revised gain in population served between the current and proposed service for Radio Elberton is 195%.

All information contained herein is thought to be true and correct to the knowledge of the undersigned.



1 - 21 - 2000

Clifton G. Moor
Bromo Communications, Inc.

CERTIFICATE OF SERVICE

The undersigned, an employee of Haley, Bader & Potts, hereby certifies that the foregoing document was mailed this date by First Class U.S. Mail, postage prepaid, or was hand-delivered, to the following:

*Leslie K. Shapiro, Esq.
Mass Media Bureau
Federal Communications Commission
445 Twelfth Street, SW, Room 3-A360
Washington, DC 20554

Waves of Mercy Productions, Inc.
5319 Amherst Way
Flowery Branch, GA 30542
(Applicant for Pendergrass, GA)



January 24, 2000

*Hand Delivery